



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/II

October 9, 2019

To:

Hon. David L. Borowski
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

James E. Wilson
Register in Probate
Milwaukee County Courthouse
901 N. 9th Street, Rm. 207
Milwaukee, WI 53233

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Court
Neenah, WI 54956-0310

Dewey Benton Martin
Corporation Counsel
901 N. 9th Street, Ste. 303
Milwaukee, WI 53233

M.M.
Sherman House
3149 N. Sherman Boulevard
Milwaukee, WI 53216

Joycarol Sherard
Law Office of Attorney Joycarol Sherard
10315 W. Wisconsin Avenue
Wauwatosa, WI 53226-3542

You are hereby notified that the Court has entered the following opinion and order:

2018AP1210-NM Milwaukee County v. M.M. (L.C. #2017GN293)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Counsel for M.M. has filed a no-merit report concluding that there is no arguable basis for challenging the circuit court's order denying M.M.'s motion for postdisposition relief

following the court commissioner's WIS. STAT. chs. 54 and 55 (2017-18)¹ guardianship and protective placement orders. M.M. has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32, no arguable issues of merit appear, and the April 4, 2018 order denying M.M.'s motion for postdisposition relief is summarily affirmed.² See WIS. STAT. RULE 809.21.

On June 6, 2017, the Milwaukee County Behavioral Health Division filed petitions for M.M.'s guardianship and protective placement. The circuit court ordered that the petitions be heard before the court commissioner on July 6, 2017. Thereafter, the guardian ad litem filed an objection on M.M.'s behalf and requested the appointment of adversary counsel. See WIS. STAT. §§ 54.42(6) and 55.10(4)(a). Adversary counsel was appointed and appeared on M.M.'s behalf at the July 6, 2017 hearing. The GAL and adversary counsel both asked that M.M.'s appearance be waived. Adversary counsel stated that he had met with M.M. and reviewed all of the documents and that "it's her position that we're going to withdraw the objection today." The court commissioner made findings and entered orders for the guardianship of M.M.'s person due to incompetency and for her protective placement.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² On July 5, 2018, we issued an order limiting the scope of the no-merit appeal to the April 4, 2018 circuit court order denying M.M.'s postdisposition motion "unless the record reveals that the circuit court reviewed the July 6, 2017" orders "entered by the court commissioner." We explained that a court commissioner's order cannot be appealed directly to the court of appeals. See *Dane Cty. v. C.M.B.*, 165 Wis. 2d 703, 708-09, 478 N.W.2d 385 (1992). Our independent review reveals that the circuit court did not review the court commissioner's orders for guardianship and protective placement. Therefore, our review is limited to the circuit court's final adjudication determining that the court commissioner had statutory authority to enter the orders for M.M.'s guardianship and protective placement.

Adversary counsel filed a notice of intent to pursue postconviction relief and appellate counsel was appointed. Appellate counsel filed a “post-dispositional motion to dismiss for lack of competency of court to proceed.” The motion asserted that the court commissioner was without jurisdiction to hear M.M.’s case because it was contested. Consequently, counsel argued that the petitions should be dismissed because the circuit court lost competency to proceed by failing to hold a hearing within the statutory time limits. The County filed an opposing brief, arguing that because adversary counsel informed the court commissioner that M.M. had changed her mind and wished to withdraw her objection, the hearing was uncontested and the court commissioner had the authority to proceed.³

The circuit court held a hearing on M.M.’s motion. M.M., the GAL, and adversary counsel were all present, and the circuit court had reviewed the July 6, 2017 hearing transcript. Adversary counsel testified that he met with M.M. at the Behavioral Health Center on July 5, 2017, and reviewed all of the case documents with her. He explained her options, including that she could withdraw her objection, and “also told her she had a right to come to the hearing if she wanted, but she didn’t have to if she didn’t want to.” Counsel said M.M. told him that she wanted to withdraw her objection and that she did not want to attend the hearing. Counsel explained to the court that if M.M. had not withdrawn her objection, he would have appeared in court, objected, and requested a hearing before a circuit court judge. Counsel testified that he went to see M.M. “after the hearing that day, and I told her what happened in

³ The County also argued that because M.M. told adversary counsel she did not want to attend the hearing, it was not error for the court commissioner to proceed in M.M.’s absence and without personally addressing her.

court, and she said, fine, thank you, and we discussed what happened and then I left.” Counsel said M.M. called him later that day and “told me she wanted to appeal.”

M.M. testified that adversary counsel looked familiar but she did not recall ever talking to him about legal matters. When asked if she remembered counsel visiting her after the July 6, 2017 court hearing to explain what had happened, M.M. said: “I have no recollection of that kind of conversation with that man that was here that said his name was [adversary counsel’s name].”

The GAL told the circuit court that she agreed to go ahead with the July 6, 2017 hearing in front of the court commissioner because “I had no reason to doubt that [M.M.] had informed [adversary counsel] that she was no longer objecting to the petition. As the Court notes, I did file a report with the Court all along indicating that I believe it was in her best interest that she have a guardian and that she be protectively placed.”

The circuit court credited adversary counsel’s testimony, finding him “completely” believable: “His veracity with this Court, his truthfulness, his testimony was consistent. It was clear. It was articulate.” On the other hand, the court found M.M.’s testimony to have “no degree of credibility,” characterizing it as “incredibly disjointed” and “incoherent.” Based on its finding that M.M. told adversary counsel she wanted to withdraw her objection to the petition, the circuit court concluded that the matter was uncontested and therefore properly conducted by the court commissioner.

We agree with appellate counsel’s analysis and conclusion that there is no arguably meritorious challenge to the circuit court’s order denying M.M.’s postdisposition motion to dismiss. Pursuant to WIS. STAT. § 757.69(1)(e), court commissioners may “[c]onduct

noncontested probate proceedings.” By statute and local court rule, this includes uncontested guardianship and protective placement hearings. *See* WIS. STAT. §§ 54.01(4) and 757.68 (4m). *See also* MILWAUKEE COUNTY CIRCUIT COURT LOCAL RULES 3.50 (Assignment of Cases to Civil/Probate Branches) and 3.54 (Uncontested Proceedings) (March 1, 2009). Here, the circuit court’s findings that M.M. had withdrawn her objections and did not wish to contest the petitions at the time of the July 6, 2017 proceedings are not clearly erroneous. As such, the court commissioner had the power to conduct the “noncontested probate proceedings” and enter the guardianship and placement orders. Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved from further representing M.M. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals